

**WRITTEN TESTIMONY BY
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**LEGISLATIVE OVERSIGHT HEARING ON
“MANDATORY CONDITIONING REQUIREMENTS ON HYDROPOWER:
HOW FEDERAL RESOURCE AGENCIES ARE DRIVING UP
ELECTRICITY COSTS AND DECREASING THE
ORIGINAL GREEN ENERGY”**

**BEFORE THE
COMMITTEE ON NATURAL RESOURCES**

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 27, 2012

Introduction

Good morning, Mr. Chairman and Members of the Committee. I appreciate the opportunity to speak with you today about the mandatory conditioning authority of federal natural resource agencies and their effect on the Enloe Hydroelectric Project (Enloe Project). My name is John Grubich, and I am the General Manager of the Public Utility District No. 1 of Okanogan County (District), in Washington. Thank you very much for the opportunity to come before you to provide a background on the Enloe Project, describe its potential for generating green renewable power, the local benefits of construction of the Enloe Project, and our issues with the federal resource agencies holding mandatory unilateral conditioning authority over the Enloe Project. I will address these topics in the order just given.

Background on Enloe Hydroelectric Project

The proposed Enloe Project is a 9 MW hydroelectric facility on the Similkameen River, near the Canadian border in North Central Washington. In 2005, the District renewed its efforts to obtain a Federal Energy Regulatory Commission (FERC) license to restore the Enloe Project. The history of hydropower development at the Enloe site spans the last century. Originally developed in 1906, the Enloe Project ceased operation in 1958 and most of the equipment was removed. The District’s proposed design for redeveloping the Enloe Project would provide important environmental benefits and, with the restoration of crest gates, more than double the previous project’s generating capacity to 9 MW.

Utilizing the FERC’s Traditional Licensing Process, the District filed the license application with FERC in August, 2008. Throughout the licensing process, the District has consulted with many federal and state entities including: Native tribes in Washington and Canada; the Department of Interior’s Bureau of Land Management (BLM, the underlying

landowner); National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and the Fish and Wildlife Service (under Section 7 of the Endangered Species Act); U.S. Army Corps of Engineers (under Section 404 of the Clean Water Act); Washington State Department of Ecology (Ecology) (under Section 401 of the Clean Water Act and state law); Washington Department of Fish and Wildlife; Washington Department of Natural Resources; Washington State Historic Preservation Office (under Section 106 of the National Historic Preservation Act); and Okanogan County.

FERC issued a Final Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) on August 31, 2011. The Final Programmatic Agreement under the National Historic Preservation Act was issued on January 30, 2012. The District and Ecology continued efforts to complete a Clean Water Act Section 401 water quality certification. On February 24, 2012, Ecology published a draft 401 certificate with a 30 day comment period. Ecology is reviewing and responding to comments in anticipation of issuing Final 401 Water Quality Certification. The District expects a FERC license after finalization of the Section 401 Water Quality Certification and the issuance of a Biological Opinion by NOAA Fisheries. After issuance of the FERC license, the District will need to finalize the right-of-way (ROW) authorization with the BLM, which is required under the Federal Land Policy and Management Act (FLPMA).

Enloe as a Source of Green, Renewable Power

Located at an existing dam and reservoir and operating on a run-of-river basis with virtually no measurable effects on the hydrologic regime of the Similkameen River, the Enloe Project will be a model of green, carbon-free hydropower design and operation. The Protection, Mitigation, and Enhancement Measures (PM&E's) identified in the Enloe License Application together with the mitigation measures identified in FERC's EA under NEPA will meet or exceed the scientific principles and technical requirements generally specified for "green hydro" certification. Leading environmental organizations have identified six key goals which provide a reasonable determination of whether a hydropower facility has low impacts on the environment. These concern fish populations, river flow, water quality, flooding of wildlife habitats, cultural resources and recreation. They have also established objective criteria to address these six goals. Internationally, European and Canadian criteria for green hydro include such considerations as: minimum flow regulations; hydro operations (e.g., peaking); reservoir management; bedload management; power plant design; hydrological character; connectivity of river systems; sediment budget and geomorphology; and landscape and biotypes. By all such measures and criteria, the Enloe Project would strongly qualify as an appropriate, green hydro project.

The Enloe Project is located above Similkameen Falls, a barrier to anadromous fish passage, and above critical habitat designated by the NOAA Fisheries. It incorporates a significant package of beneficial measures to enhance and protect downstream fish. The District has agreed to provide fisheries and aesthetic flows required by Ecology to protect aesthetic and instream values, as will be embodied in the 401 Water Quality Certification in final preparation by Washington State.

When licensed, the District will spend approximately \$2.4 million of the total estimated project cost of \$30.9 million on construction and implementation of the PM&E's over 40 years, a significant portion of which will employ local community professional services, vendors and contractors. These "ecological investments" to protect, mitigate and enhance the physical and human environment of the Enloe Project are equivalent to those widely required for "green hydro certification." They include:

- Enhancement of fish habitat far exceeding the minimal fisheries impacts of the Project. A cold water spawning and rearing refuge will be built out of an existing side channel, 15,000 cubic yards of spawning gravels will be added to the gravel-poor Similkameen River, and large woody debris will be transported beyond the existing dam, among other things.
- A comprehensive vegetation and wetland management program, providing restoration, mitigation, and monitoring.
- Protection of water temperature, dissolved oxygen, total dissolved gas, and other water temperature parameters.
- Recreation amenities that greatly exceed the measurable effects of the project, including substantial access improvements and interpretation.
- Protection of local wildlife through project design and construction as well as construction of enhancements to benefit bald eagles.

The Development of the Enloe Project is Consistent with National Policy

The Enloe Project has been developed consistent with the recent interest in adding hydropower development to existing dams. Currently, only 3 percent of the nation's 80,000 dams generate electricity.¹ A study by the Department of Energy, National Oak Ridge Laboratory estimated that approximately 12.6 GW of new, renewable power can be generated at existing dam sites.² This study also found that a majority of these sites can be developed on federal land, not disturbing tribal sites, critical habitat, or national parks and wilderness areas.

A Memorandum of Understanding (MOU) was signed on March 24, 2010 between the Department of the Interior (DOI), the Department of Energy (DOE) and the Department of Army, implemented through the U.S. Army Corps of Engineers (USACE). The purpose of the MOU is to develop reliable, affordable, and environmentally sustainable hydropower by building a long-term working relationship, prioritizing similar goals, and aligning ongoing and future renewable energy development efforts between DOE, DOI, and USACE. In its 2-year progress report, DOE, DOI and USACE stated that one of the goals of the MOU was to investigate the facilitation of the permitting process for federal and non-federal hydropower generation.

Benefits of the Enloe Project to Washington State

The District believes that hydropower is a clean renewable resource with significant untapped job-creating and environmental benefits, and potential for expansion that should be strongly encouraged by Congress. Specifically, the 2010 American Recovery and Reinvestment

¹ *National Hydropower Association*, <http://hydro.org/tech-and-policy/developing-hydro/powering-existing-dams/>.

² *National Hydropower Association*, <http://hydro.org/wp-content/uploads/2011/04/ORNL-Hydro-Factsheet-final.pdf>

Act stimulus package included a \$6 million allotment to train low-income, Veteran, and disabled workers in Washington State to perform energy-efficient construction jobs.³ The Enloe Project is an example of a construction project that could use these skilled “green” workers and create other economic benefits in the area. In April-May 2012, the unemployment rate in Washington State was 8.3%,⁴ and specifically it was 10.2% in Okanogan County.⁵ The Enloe Project is projected to employ at least 20-25 percent of the personnel needed for the construction of the project from the local impacted area. In addition, the remainder of the construction personnel would temporarily relocate to the construction area, benefiting local businesses, retail and housing providers during the length of construction and compliance.

The Enloe Project is expected to generate an average of 45.0 GWh annually, and the total value of the power produced by the Enloe Project is estimated to be \$2.6 million annually. This generation and revenue represent a source of clean, renewable and sustainable hydropower that will be used by and benefit the residents of Okanogan County. Overall, the District’s power portfolio is based on 88 percent hydropower (from other sources), with the remainder being wind, nuclear and a small amount of other energy sources. To meet increased demand for power, if unable to develop the project due to the cost of requirements placed on it by federal agencies, the District would be forced to forego the local economic and environmental benefits of this green generation and obtain the replacement power from natural gas or coal fired generation.

Issues with BLM’s Authority to Issue Mandatory Conditions in its ROW

Developing the Enloe Project with the PM&E’s proposed in the license application (which are based on extensive consultation with most federal and state resource agencies, as well as the additional measures recommended by FERC in the Final EA), would represent an environmentally beneficial and economically viable project. However, the prospect of further mandatory enhancement measures poses a potential jeopardy that could destroy the economic viability of the project. Notwithstanding the positive project attributes of the Enloe Project and outcomes of the FERC NEPA process, the BLM has proposed further onerous environmental recommendations in the FERC licensing process which are unnecessary and unjustified. These recommendations would accomplish BLM programs and objectives that are not directly related to project impacts. Enloe is a very small project, with a total budget of approximately \$30.9 million (of which about \$2.4 million is committed to environmental mitigation). BLM’s program would increase total project cost by 20 percent.

BLM’s recommendations would not only raise the cost of the PM&E’s from **\$2.4 million** to an estimated **\$8.7 million**, but also would expose the District to future open-ended cost increases because BLM’s requirements would reserve to BLM the discretion to increase requirements and costs still further in the future. BLM’s modified recommendations all go well beyond the level of mitigation considered sufficient by FERC in its EA; they are therefore unnecessary to mitigate project impacts, and lack any objective justification. It is also important to understand that the District’s proposed PM&E program, as enhanced by FERC’s mitigation

³ http://seattletimes.nwsources.com/html/localnews/2010846442_recoveryjobs21m.html.

⁴ <http://www.bls.gov/lau/>.

⁵ <https://fortress.wa.gov/esd/employmentdata/eeis-tools/labor-area-summaries>.

requirements, already offers significant beneficial enhancements of the human and physical environments, beyond the mere mitigation of Project effects.

The BLM's many additional recommendations would restore recommendations previously considered and rejected by FERC in its EA. FERC received these recommendations from BLM at least twice, explicitly considered each of them in its EA, and rejected them. Although BLM has declined to formally impose these requirements as mandatory conditions under Section 4(e) of the Federal Power Act (FPA), BLM has stated that it plans to achieve the same result by unilaterally imposing these recommendations as requirements of its ROW, regardless of FERC's considered opinion. This approach to the license and ROW conditions disregards and subverts the purpose of the FERC licensing process.

These BLM unjustified and unnecessary recommendations include requirements that the District:

- Spend an amount equivalent to nearly 80 percent of the entire existing mitigation program to move spoils primarily composed of native rock off site.
- Be responsible for a program of recreation improvements that has no relationship to project impacts or needs, and would triple the District's recreation mitigation cost.
- Rebuild an expensive footbridge that FERC concluded was not necessary due to the lack of public facilities and recreation opportunities (existing or proposed) on the west side of the river.
- Conduct studies leading toward aesthetic flows that BLM would set itself, ignoring flow agreements that have been negotiated through the Washington State 401 Water Quality Certification process, and exposing the project to an open-ended financial risk.
- Comply with more extensive vegetation management requirements than BLM has imposed on any other project of which we are aware, potentially increasing mitigation costs for these resources by more than 150 percent.
- Increase fisheries mitigation to 150 percent of the planned program to address impacts unrelated to the project, ignoring the extensive and well-supported fisheries mitigation program negotiated with agencies and Tribes that already fully mitigates impacts.

Any process that allows a federal resource or land management agency to unilaterally impose its "wish list" of PM&E's on a project without regard to actual project impacts and the economic feasibility of such conditions on the project represents an invitation to arbitrary, project-crippling requirements. What is required is a process that requires or at least encourages federal resource or land management agencies to participate in developing a consensus of interested federal and state agencies with respect to what constitutes a reasonable level of project-related PM&E's. Parceling out unilateral authority to impose PM&E requirements on a project – as is currently the case with mandatory conditioning authority under FPA Section 4(e) and independent conditioning authority exercised by federal land management agencies under FLPMA – is potentially disastrous, saddling such projects with needless costs or, in too many cases, thwarting needed development altogether.

Conclusion

The District is hopeful that BLM may yet reconsider its intent to overreach with these excessive license and ROW conditions and thereby preserve the economic viability of our proposed beneficial green hydropower project. We applaud the Committee for looking into the impact of federal resource agencies' mandatory conditioning authority on the economics of projects such as the Enloe Project. In closing, I would like to thank the Committee for this opportunity to speak today and address the very important and potentially project-crippling requirements posed upon the District in its pursuit of licensing a clean renewable power project. The District looks forward to working cooperatively with the Committee as it moves forward with its assessment of federal natural resource agency conditioning authority. I will be happy to answer any questions.